IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1392 OF 2006

The Cosmos Cooperative Bank Ltd. ..... Petitioner
vs.
M/s. Arth Housing Development Pvt. Ltd. And anr. ... Respondents

Mr. Siddharth Karpe & Dilip Taur for petitioner
Mr. M.P.S. Rao with Premchand Pal and Yogendra Kadam for respondent no.1.
Mr. Milind More AGP for respondent no. 2.

CORAM: D. G. KARNIK **J.**

DATE:12/7/2006

P.C.:

1. Heard learned counsel for the petitioner, respondent no.1 and learned AGP for respondent no. 2.
2. By this petition the petitioner challenges the order dated 27th June 2005 passed by the Divisional Joint Registrar, Cooperative Societies, Mumbai Division, allowing the Revision application filed by the respondent no.1.
3. The property belonging to one M/s. Patel Builders and Hire Purchase Pvt. Ltd., (for short the borrower) was auctioned for recovery of the dues of the petitioner Bank. The bid made by the respondent no.1 was accepted and the acceptance was communicated to the respondent no.1, who deposited the initial

earnest money. The respondent no.1 however, discovered that the borrower had not paid the dues of the Cooperative Society in which the property was situated and the dues of Rs.12,16,000/- , would be required to be paid to the housing society before the property could be transferred in the name of the respondent no.1. The respondent no.1 therefore did not pay the balance consideration but requested the petitioner Bank to clear the dues of the housing society. As the respondent no.1 did not pay the balance amount within the time fixed in the conditions of auction the earnest money was forfeited by the Special Recovery Officer. That action of forfeiture of earnest money was challenged by the respondent in revision before the Divisional Joint Registrar. By the impugned order the Divisional Joint Registrar allowed the revision and set aside the order passed by the Special Recovery Officer. That order is impugned in this petition.

4. The proclamation of sale did not say that the property was sold subject to the dues of the housing society and that the purchaser would be required to pay the arrears and dues of the housing society. Rule 107 of the Maharashtra Cooperative Societies Act 1961 requires that the proclamation of sale should disclose all encumbrances on the property. The rule was breached as the charge of the housing society for arrears of maintenance was not disclosed. The Divisional Joint Registrar therefore held that the proclamation was defective. In my view the finding of the Divisional Joint Registrar on this aspect cannot be assailed.

5. Further more, the Special Recovery Officer had ordered

forfeiture of the earnest money in favour of the petitioner Bank. Rule 107 of the Maharashtra Cooperative Societies Act requires that the forfeited money, on cancellation of the auction, must be credited to the government. The Special Recovery Officer did not credit the forfeited earnest money to the government but ordered forfeiture of the earnest money in favour of the Bank which is also contrary to the rules. The Divisional Joint Registrar therefore was right in setting aside the order of the Special Recovery Officer on this count also.

6. There is no merit in this petition. The petition is rejected summarily.

(D. G. KARNIK **J**)

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